

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----	X	
THE INTERCEPT MEDIA, INC.,	:	Case No. 1:24-cv-01515-JSR-HJR
Plaintiff,	:	
v.	:	
OPENAI, INC., OPENAI GP, LLC,	:	
OPENAI, LLC, OPENAI OPKO LLC,	:	
OPENAI GLOBAL LLC, OAI	:	
CORPORATION, LLC, OPENAI	:	
HOLDINGS, LLC, and MICROSOFT	:	
CORPORATION,	:	
Defendants.	:	
-----	X	

**OPENAI DEFENDANTS’ NOTICE OF SUPPLEMENTAL AUTHORITY
IN SUPPORT OF MOTION TO DISMISS**

Defendants OpenAI, Inc., OpenAI GP, L.L.C., OpenAI, L.L.C., OpenAI OpCo, L.L.C., OpenAI Global, L.L.C., OAI Corporation, L.L.C., and OpenAI Holdings, L.L.C. (collectively, the “OpenAI Defendants”), by and through counsel, respectfully submit this Notice of Supplemental Authority to apprise the Court of a recent order that further supports OpenAI’s pending Motion to Dismiss (Dkt. 52).

In *Raw Story Media, et al. v. OpenAI, Inc., et al.*, No. 24-cv-01514 (S.D.N.Y.) (McMahon, J.), plaintiffs alleged that the OpenAI Defendants violated Section 1202 of the Digital Millennium Copyright Act by “creat[ing] copies of Plaintiffs’ works of journalism with [certain CMI] removed and includ[ing] them in training sets used to train ChatGPT.” *See* Complaint, *Raw Story Media*, No. 24-cv-01514, Dkt. 1 ¶¶ 49–51 (attached hereto as Exhibit 1). On November 7, 2024, the United States District Court for the Southern District of New York dismissed the complaint in its entirety for lack of subject matter jurisdiction. *See* Order, *Raw Story Media*, No.

24-cv-01514, Dkt. 117 (“MTD Order”) (attached hereto as Exhibit 2); *see also id.* at 9–10 (inviting plaintiffs to “explain[] [] why [any] proposed amendment would not be futile” notwithstanding the Court’s “skeptic[ism] about Plaintiffs’ ability to allege a cognizable injury”). The Court held, *inter alia*, that (1) plaintiffs had failed to “allege that a copy of their work from which the CMI has been removed has been disseminated by ChatGPT,” *id.* at 6; and (2) plaintiffs had “not plausibly alleged that there is a substantial risk that the *current* version of ChatGPT will generate a response plagiarizing one of *Plaintiffs’* articles,” *id.* at 9 (internal citation marks omitted) (emphasis in original). In so doing, the Court stated that it was “not convinced that the mere removal of identifying information from a copyrighted work—absent dissemination—has *any* historical or common-law analogue.” *Id.* at 6–7 (emphasis in original). The MTD Order addresses issues discussed at the recent November 1, 2024 hearing before this Court on the pending motions to dismiss filed by the OpenAI Defendants and Microsoft. *See* Tr. of Oral Arg. at 3:13–13:18, 20:19–23:4 (attached hereto as Exhibit 3).

Dated: November 11, 2024

Respectfully Submitted,

By: /s/ Joseph C. Gratz

MORRISON & FOERSTER LLP

Joseph C. Gratz (*pro hac vice*)

jgratz@mofo.com

Andrew L. Perito (*pro hac vice*)

aperito@mofo.com

Vera Ranieri (*pro hac vice*)

vranieri@mofo.com

425 Market Street

San Francisco, CA 94105

Telephone: 415.258.7522

Rose S. Lee (*pro hac vice*)

roselee@mofo.com

707 Wilshire Boulevard, Suite 6000

Los Angeles, CA 90017-3543

Telephone: 213.892.5454

Carolyn M. Homer (*pro hac vice*)*

cmhomer@mofo.com

2100 L Street, NW, Suite 900

Washington, DC 20037

Telephone: (202) 650-4597

Emily Claire Wood

ewood@mofo.com

Eric K. Nikolaidis

enikolaides@mofo.com

250 West 55th Street

New York, NY 10019-9601

Telephone: 212.468.8000

Attorneys for OpenAI Defendants

Dated: November 11, 2024

By: /s/ Elana Nightingale Dawson

LATHAM & WATKINS LLP

Andrew M. Gass (*pro hac vice*)

andrew.gass@lw.com

Joseph R. Wetzel

joseph.wetzel@lw.com

505 Montgomery Street, Suite 2000

San Francisco, CA 94111

Telephone: 415.391.0600

Sarang V. Damle

sy.damle@lw.com

Elana Nightingale Dawson (*pro hac vice*)

elana.nightingaledawson@lw.com

Michael A. David

michael.david@lw.com

555 Eleventh Street, NW, Suite 1000

Washington, D.C. 20004

Telephone: 202.637.2200

Allison L. Stillman

alli.stillman@lw.com

Rachel Renee Blitzer

rachel.blitzer@lw.com

Herman Heng Yue

herman.yue@lw.com

Luke Budiardjo

luke.budiardjo@lw.com

Yijun Zhong

elaine.zhong@lw.com

1271 Avenue of the Americas

New York, NY 10020

Telephone: 212.906.1200

Attorneys for OpenAI Defendants

Dated: November 11, 2024

By: /s/ Thomas E. Gorman

KEKER, VAN NEST & PETERS LLP

Robert A. Van Nest (*pro hac vice*)

rvannest@keker.com

Paven Malhotra (*pro hac vice*)*

pmalhotra@keker.com

Michelle S. Ybarra (*pro hac vice*)

mybarra@keker.com

Andrew S. Bruns (*pro hac vice*)

abrun@keker.com

Andrew Dawson (*pro hac vice*)

adawson@keker.com

Edward A. Bayley (*pro hac vice*)

ebayley@keker.com

R. James Slaughter (*pro hac vice*)

rslaughter@keker.com

Nicholas S. Goldberg (*pro hac vice*)

ngoldberg@keker.com

Thomas E. Gorman (*pro hac vice*)

tgorman@keker.com

Katie Lynn Joyce (*pro hac vice*)

kjoyce@keker.com

Christopher S. Sun (*pro hac vice*)

csun@keker.com

633 Battery Street

San Francisco, CA 94111-1809

Telephone: 415.391.5400

Attorneys for OpenAI Defendants

* All parties whose electronic signatures are included herein have consented to the filing of this document in accordance with Rule 8.5(b) of the Court's ECF Rules and Instructions.